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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,810	11/27/2001	Jay S. Walker	01-050	1237
22927	7590	08/11/2005	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			SHERR, CRISTINA O	
			ART UNIT	PAPER NUMBER
			362I	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p><b>Application No.</b></p> <p>09/994,810</p>	<p><b>Applicant(s)</b></p> <p>WALKER ET AL.</p>	
	<p><b>Examiner</b></p> <p>Cristina Owen Sherr</p>	<p><b>Art Unit</b></p> <p>3621</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 and 76-83 is/are pending in the application.
- 4a) Of the above claim(s) 83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-63 and 76-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. This communication is in response to applicant's amendment filed May 24, 2005. Claim 83 has been canceled. Claims 16 and 62 have been amended. Claims 1-63 and 76-82 remain pending in this case.

### ***Response to Arguments***

2. Claims 62 and 63, as amended, are no longer indefinite. Therefore the section 112 rejection is withdrawn.
3. Applicant's arguments filed May 24, 2005 have been fully considered but they are not persuasive.
4. Applicant argues with respect to claims 1-63 that said claims are statutory. Examiner respectfully disagrees and directs attention to MPEP 2106, 2100-14 (quoting In re Alappat, 33 F.3d at 1544, 31 USQ2d at 1557), In re Musgrave, 431 F.2d 882, 167 USPQ 280 (CCPA 1970), In re Alappat 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting Diamond V. Diehr, 450 U.S. at 192, 209 USPQ at 10).
5. Applicant further argues, with respect to claims 1,2, 6-9, 14, 17, 30, 31, 33, 34, 62, 63, and 76-82 that Smith has nothing to do with product demand, much less measuring product demand or doing anything if product demand meets a predefined criterion. Attention is directed to Smith at (Page 20, lines 15-20; Page 31, lines 34-36).
6. Applicant further argues that Levasseur had does not disclose a machine that monitors the historical demand over a period of time for various classes of selectable vendable products and allocating the space within the vending machine based on the historical demand. Attention is directed to the abstract.

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7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention that the vending machine taught by Smith et al would store substitute product identifiers for products that would be substitutes to primary products selected by the user so that the machine would know which substitute products to offer the user if the user's primary selection is not available or out of stock.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-63 and 83 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The basis of this rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to

promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. A claim limited to a machine or manufacture which has practical application in the technological arts is statutory. In most cases, a claim to a specific machine or manufacture will have practical application in the technological arts. See MPEP 2106, 2100-14 (quoting *In re Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557). Additionally, for subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts. See *In re Alappat* 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond V. Diehr*, 450 U.S. at 192, 209 USPQ at 10). For a process claim to pass muster, the recited process must somehow advance the technological arts. See *In re Musgrave*, 431 F.2d 882, 167 USPQ 280 (CCPA 1970). In the present case, claims 1-63 and 83 only recite an abstract idea. The recited steps of merely receiving selections from a purchaser, measuring demand for products, measuring a time from a detection of a purchaser, retrieving substitute product identifiers and offering substitute products does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to select substitute products.

10. Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. An invention, which is eligible or patenting under 35 U.S.C. 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful

result. The fundamental test for patent eligibility is thus to determine whether the Maimed invention produces a "use, concrete and tangible result". See AT&T v. Excel Communications Inc., 172 F.3d at 1358, 50 USPQ2d at 1452 and State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d at 1373. 47 USPQ2d at 1601 (Fed. Cir. 1998). The test for practical application as applied by the examiner involves the determination of the following factors"

(a) "Useful" - The Supreme Court in Diamond v. Diehr requires that the examiner look at the claimed invention as a whole and compare any asserted utility with the claimed invention to determine whether the asserted utility is accomplished. Applying utility case law the examiner will note that:

- i. the utility need not be expressly recited in the claims, rather it may be inferred.
- ii. if the utility is not asserted in the written description, then it must be well established.

(b) "Tangible" -Applying In re Warmerdam, 33 F.3d 1354, 31 US PQ2d 1754 (Fed. Cir. 1994), the examiner will determine whether there is simply a mathematical construct claimed, such as a disembodied data structure and method of making it. If so, the claim involves no more than a manipulation of an abstract idea and therefore, is nonstatutory under 35 U.S.C. 101. In Warrnerdam the abstract idea of a data structure became capable of producing a useful result when it was fixed in a tangible medium, which enabled its functionality to be realized.

(c) "Concrete" - Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. An appropriate rejection under 35 U.S.C. 101 should be accompanied by a lack of enablement

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rejection, because the invention cannot operate as intended without undue experimentation.

11. In the present case, the claimed invention offers substitute products to purchasers (i.e., repeatable) after receiving a selection of a product from a purchaser and after determining that the requested product is unavailable (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-63 and 83 are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-2, 6-9, 14, 17, 30-31, 33-34, 62-63 and 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al, WO 97/28510, published 07 August 1997.

15. As per Claims 1, 9, 14, 33, 76 and 81, Smith et al disclose an apparatus for dispensing a product from a vending machine that includes a device in communication with the vending machine (Figure 1), storing product information and identifiers in a database (Page 20, lines 15-20; Page 31, lines 34-36), receiving at the processor a selection of the first product from a purchaser and if the first product is not available, offering a substitute product to the purchaser (Page 6, lines 5-20; Page 7, lines 1-10; Page 26, lines 7-14; Page 27, lines 21-24) and dispensing the substitute product (Page 19, lines 21-27). Smith et al does not explicitly teach that the machine stores or retrieves a substitute product identifier for a substitute product, however, in order for the machine to know which products to offer as alternative products for user selections that are not available, it would be necessary to store product identifiers for products that are substitutes or alternatives to other products. Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention that the vending machine taught by Smith et al would store substitute product identifiers for products that would be substitutes to primary products selected by the user so that the machine would know which substitute products to offer the user if the user's primary selection is not available or out of stock.



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16. As per Claims 2 and 77-78, Smith et al further disclose receiving an amount of money from a purchaser (Page 10, lines 7-11; Page 11, lines 18-23; Col. 14, lines 11-25).

17. As per Claim 6, Smith et al further disclose determining the availability of the first product (Page 6, lines 5-20; Page 7, lines 1-10; Page 26, lines 7-14; Page 27, lines 21-24).

18. As per Claim 7, Smith,et al further disclose recording a value corresponding to the selection of the first product (Page 8, lines 5-36; Page 26, lines 2-15; Page 35, lines 30-38).

19. As per Claim 8, Smith et al further disclose wherein the value includes one of a first product identifier corresponding to the first product, a timer the first product was selected, a date the first product was selected and an availability of the first product (Page 8, lines 5-36; Page 26, lines 2-15; Page 35, lines 30-38).

20. As per Claims 17 and 34, Smith et al further disclose offering the substitute product to the consumer at a discounted price (Page 11, lines 5-11; Page 26, lines 26-33).

21. As per Claims 30-31 and 63, Smith et al further disclose wherein the first product and the substitute product is a service (Page 8, lines 15-38; Page 11, lines 31-35; Page 12, lines 22-30; Page 14, lines 10-15).

22. As per Claim 62, Smith et al further discloses a method for receiving a selection of a product and' determining an availability of the product (Page 6, lines 5-20; Page 7, lines 1-10; Page 26, lines 7-14; Page 27, lines 21-24), and if the product is unavailable,

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storing an indication that the selected product is unavailable (Page 8, lines 5-36; Page 26, lines 2-15; Page 35, lines 30-38).

23. As per Claims 79-80, Smith et al further disclose wherein the device is operable to receive data via the network and display to a purchaser data received via the network (Figure 1; Col. 9, lines 14-38; Col. 17, lines 1-30).

24. As per Claim 82, Smith et al further disclose receiving input from a purchaser via a touch screen (Page 23, lines 1-10).

25. Claims 10-12, 15-16, 32 and 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al, WO 97/28510, published 07 August 1997, in view of Levasseur, U.S. Patent No. 5,029, 098.

26. As per Claims 10-12, 15-16 and 32, Smith et al fails to explicitly disclose determining substitute products for a first product and storing for the first product, a substitute product identifier corresponding to the substitute product, however, in order for the machine to know which products to offer as alternative products for user selections that are not available, it would be necessary to store product identifiers for products that are substitutes or alternatives to other products. Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention that the vending machine taught by Smith et al would store substitute product identifiers for products that would be substitutes to primary products selected by the user so that the machine would know which substitute products to offer the user if the user's primary selection is not available or out of stock. Smith et al further disclose a computerized method of dispensing a product from a vending machine that includes a processor

comprising measuring a demand for each of a plurality of products stored in the machine (Page 8, lines 5-36; Page 26, lines 215; Page 35, lines 30-38), however, Smith et al fail to specifically disclose that the substitute product is determined based on a measure of demand for a plurality of products. Levasseur discloses a vending machine that monitors the historical demand over a period of time for various classes of selectable vendable products and allocating the space within the vending machine based on the historical demand (Abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Smith et al and store product identifiers corresponding to substitute products based on demand since a customer will likely purchase a substitute product that has a high demand.

27. As per Claims 51-52, Smith et al further disclose wherein the first product and the substitute product is a service (Col. 8, lines 15-38; Col. 11, lines 31-35; Col. 12, lines 22-30; Col. 14, lines 10-15).

#### Double Patenting

28. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

29. A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

30. Claims 1-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,324,520 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

31. Claim 1, of U.S. Patent No. 6,324,520 B1 recites all the limitations of claim 1 of the present application, however, Claim 1 of U.S. Patent No. 6,324,520 B1 differs since it further recites additional claim limitations including detecting a purchaser, measuring a time between a detection and a receipt of the amount of money from the purchaser and storing a value corresponding to the time. However, it would have been obvious to a person of ordinary skill in the art to modify claim 1 of U.S. Patent No. 6,324,520 B1 by removing the limitations directed to the detection of a purchaser and measuring the time resulting generally in the claims of the present application since the claims of the present application and the claim recited in U.S. Patent No. 6,324,520 B1 actually perform a similar function. It is well settled that the omission of an element and its

function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. Claims 2-31 depend upon claim 1 and are rejected for the same reasons.

32. Claims 32-52 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,324,520 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

33. Claim 25 of U.S. Patent No. 6,324,520 1311 recites all the limitations of claim 32 of the present application, however, Claim 25 of U.S. Patent No. 6,324,520 131 differs since it further recites additional claim limitations including determining an average selection time and dispensing the substitute product. However, it would have been obvious to a person of ordinary skill in the art to modify claim 25 of U.S. Patent No. 6,324,520 131 by removing the limitations directed to determining an average selection time resulting generally in the claims of the present application since the claims of the present application and the claim recited in U.S. Patent No. 6,324,520 B1 actually perform a similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not

needed would be obvious to one of ordinary skill in the art. Claims 33-52 depend upon claim 32 and are rejected for the same reasons.

35. Claims 53-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 37 of U.S. Patent No. 6,324,520 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

36. Claim 37 of U.S. Patent No. 6,324,520 131 recites all the limitations of claim 53 of the present application, however, Claim 37 of U.S. Patent No. 6,324,520 1311 differs since it further recites additional claim limitations including a detector device means. However, it would have been obvious to a person of ordinary skill in the art to modify claim 37 of U.S. Patent No. 6,324,520 B1 by removing the limitations directed to the detector device means resulting generally in the claims of the present application since the claims of the present application and the claim recited in U.S. Patent No. 6,324,520 131 actually perform a similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex pane Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. Claims 54-61 depend upon claim 53 and are rejected for the same reasons.

37. Claims 62-63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,324,520 B1 in view of Smith et al, WO 97128510, published 7 August 1997. Claim 11 of U.S.

Patent No. 6,324,520 131 recites all the limitations of claim 62 of the present application, however, Claim 11 of U.S. Patent No. 6,324,520 1311 differs since it fails to recite storing an indication that the selected product is unavailable. Smith et al disclose an electronic retailing and vending system and teach a method for monitoring storing sales information, storing this information and reporting the information to a central location wherein the information includes information regarding items that are unavailable in the device (Page 8, lines 5-Page 9 line 13; Page 26, lines 2-15; Page 35, lines 30-38). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claim 11 of U.S. Patent No. 6,324,520 B1 and include storing an indication that a selected product is unavailable as taught by Smith et al. Smith et al provides motivation by indicating that this information may be used by the system to establish a location where the product requested by the purchaser is available (Page 9, lines 1-13). Claim 63 depends upon claim 52 and is rejected for the same reason.

38. Claims 76-82 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,324,520 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other.

39. Claim 1 of U.S. Patent No. 6,324,520 81 recites all the limitations of claims 76 and 83 of the present application, however, Claim 1 of U.S. Patent No. 6,324,520 B1 differs since it further recites additional claim limitations including detecting a purchaser, measuring a time between a detection and a receipt of the amount of money from the

purchaser and storing a value corresponding to the time. However, it would have been obvious to a person of ordinary skill in the art to modify claim 1 of U.S. Patent No. 6,324,520 131 by removing the limitations directed to the detection of a purchaser and measuring the time resulting generally in the claims of the present application since the claims of the present application and the claim recited in U.S. Patent No. 6,324,520 B1 actually perform a similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex pane Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art. Claims 77-82 depend upon claim 76 and are rejected for the same reasons.

#### Allowable Subject Matter

40. Claims 53-61 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101 and double patenting set forth in this Office action.

41. Claims 3-5, 13, 18, 19-29, 35-50, objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims; and also written to overcome the rejection(s) under 35 U.S.C. 101 and double patenting set forth in this Office action.

42. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to



the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed Invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

43. The prior art made of record and not relied upon is considered pertinent to applicants disclosure. • Levasseur [4,359,147] discloses a means to control vending functions and teaches the capability for the customer to make alternate selections when the primary selection is not available

- Paganini et al disclose a method and apparatus for detecting the presence and movement of a user within a defined area in the proximity of a user device or teller machine

Levasseur [4,478,353] discloses a vendor control system and teaches the capability for the customer to make alternate selections when the primary selection is not available

- Abraham et al disclose a system that checks brands of articles in a vending machine which are being dispensed more frequently indicating a higher demand for those articles

- Hayashi et al disclose a control and monitoring apparatus for vending machines and teach monitoring sales management data to determine the number of products sold to understand customer demand for products.

### ***Conclusion***

**44. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

45. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

46. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

47. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

38. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*Alpha Line 1*  
*PRIMARY PATENT*